



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/167077

PRELIMINARY RECITALS

Pursuant to a petition filed July 07, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on July 28, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly modified the petitioner's request for Personal Care Worker (PCW) hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Lori Schultz

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On April 13, 2015 the petitioner's provider completed a Personal Care Screening Tool (PCST). The PCST indicated that the petitioner needed 37.75 hours of Personal Care Worker (PCW) services.
3. On May 13, 2015 the petitioner's provider submitted a request for prior authorization of PCW hours based upon the aforementioned PCST. Specifically, the petitioner's provider requested 49 hours per week of PCW services for 53 weeks. This was at a total cost of \$41,759.76.
4. On June 2, 2015 the Department notified the petitioner in writing that it approved 23.25 hours per week of PCW services.
5. The petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 7, 2015.
6. The petitioner has diagnoses of joint disease, rheumatoid arthritis, neuropathy and fibromyalgia.

DISCUSSION

Personal Care Services are a covered service by Medicaid. They are defined as, "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care." *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under *Wis. Admin. Code DHS §107.11(2)*, that are needed to treat a recipient's medical condition or to maintain a recipient's health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

"In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;

11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

The petitioner’s provider on behalf of petitioner, requested 49 hours per week of Personal Care Worker (PCW) hours. According to the letter from the respondent, DHS approved 23.25 hours per week of services. At the hearing petitioner requested 6.5 hours of PCW time.

In determining how many hours of personal care services an individual is allowed, a service provider completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located on the Forward Health website: <https://www.forwardhealth.wi.gov/WIPortal>, under topic number 3165. The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table.

The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165*; this chart can also be found at the aforementioned website.

In general seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs), such as glucometer readings or medication assistance, are also examined.

The petitioner has diagnoses of joint disease, rheumatoid arthritis, neuropathy and fibromyalgia. Her functional limitations include bowel/bladder incontinence, endurance and ambulation. Her activity is “up as tolerated” with a cane or walker.

It is petitioner’s burden to establish the necessity of the requested time. There is nothing in the record that supports the need for 49 hours per week of PCW services. The PCST recommended 37.75 hours per week. Although the petitioner’s doctor states that the petitioner needs a minimum of 7 hours per day of home care 7 days a week due to her medical conditions, the doctor does not state the petitioner’s specific medical conditions nor any of the tasks that she would assistance completing.

At the hearing the petitioner indicated that she needed more time than the Department allowed for each of the PCW’s tasks. The petitioner’s testimony was not credible. For example, the petitioner testified that she lived alone. The petitioner’s PCW later testified that he lived with the petitioner sleeping on her couch. In addition, the PCST states that petitioner lives with family. If a person lives alone a person is entitled to additional PCW for activities incidental to daily living. When the petitioner understood this, she indicated that she lived alone. This was contrary to the PCST and her PCW’s later testimony. The petitioner’s testimony was self-serving and not credible.

The petitioner stated that she needs 1.5 to 2.0 hours for bathing alone. Her argument is that she is stiff in the morning due to her medical conditions. She needs to get moving, stretch, perhaps have some massage, and then she is able to get out of bed. Once she is out of bed, she has to get undressed, and bathed. She believes that due to her medical conditions each PCW task takes longer. However, the petitioner does not present with any unusual medical condition. There is no reason that the times allowed per the time allocation table are insufficient in this case. Neither the petitioner nor her caregiver offered testimony explaining why the Department’s calculation of need under the PCST and time allocation table was flawed. The petitioner did not articulate what quantity of additional time is needed for each task or what specific behaviors justify more time. Nothing was quantified or added up to total the 6.5 hours per day requested. In addition, some of the services that the petitioner requests, like massage, are not covered services.

The Department’s analysis of petitioner’s needs is the most thorough and credible determination in the record. The petitioner received a copy of the nurse consultant’s letter prior to the hearing, yet petitioner offered no specific rebuttal to any of the points or time calculations offered by the Department. Much of what the petitioner offered in terms of testimony was largely incredible and self-serving.

Nothing in the record specifically supports and quantifies the petitioner’s need for 6.5 hours per day of PCW services. Although the petitioner’s doctor provided a letter stating the petitioner needed 7 hours per day of PCW time, the doctor did not quantify that time or explain what areas the petitioner needed assistance in. Perhaps in the petitioner would like to show her doctor the PCST, the nurse consultant’s letter, and this decision, the doctor can prepare a more detailed analysis explaining why the petitioner’s specifically needs 7 hours per day of PCW services. The petitioner must offer some specificity and evidence to support the requested time. Not even the PCST justifies the amount of time the petitioner’s requests. Without a better way to quantify the time for services, I have no basis upon which to find in favor of the petitioner’s request for PCW hours.

The petitioner should be aware that if the provider can show a medical need for more time, it can always request a new prior authorization request for additional time with evidence to show the need for the additional time. However, based upon the evidence before me I cannot conclude that the Department’s reduction was wrong.

CONCLUSIONS OF LAW

The Department correctly modified the petitioner's request for Personal Care Worker (PCW) hours.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

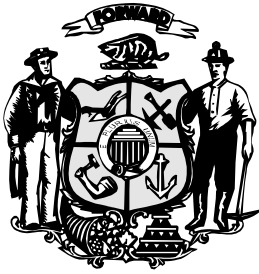
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of August, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 14, 2015.

Division of Health Care Access and Accountability